

23. **Anonymous Bidding.** The *Further Notice* seeks comment on whether the Commission should use limited information (or “anonymous bidding”) procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities.

24. **Public Safety Broadband.** The *Further Notice* tentatively concludes to redesignate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. The Commission has issued no licenses for wideband channels. Furthermore, although two special temporary authorizations (STAs) have been issued for wideband operations, to the extent a public safety entity has constructed, deployed and is currently operating, as of the release date of the accompanying *Report and Order*, a wideband system pursuant to a grant of STA, and has reason to continue such operations beyond the current term of the STA, the *Further Notice* states that the Commission will work with such entity to extend such authority. The *Further Notice* also seeks comment on a tentative conclusion to consolidate the narrowband channels to the top of the public safety band, locate the broadband spectrum at the bottom of the public safety band, and divide these segments with an internal guard band. These tentative conclusions may entail additional reporting, recordkeeping or other compliance efforts by existing public safety entities. The *Further Notice* does not otherwise propose any additional reporting, recordkeeping or other compliance requirements.

25. **Frontline Proposal.** The *Further Notice* seeks comment on Frontline’s proposed “Public Safety Broadband Deployment Plan.” This plan would alter the upper portion of the band plan and service rules in order to auction a single nationwide 10-megahertz license (a new “E Block”). The “E Block” licensee would be required to meet certain build-out benchmarks, and would be required to provide priority access for public safety broadband operations during times of emergency as specified in a Network Sharing Agreement. Under the proposal, the “E Block” licensee would be required to operate as a wholesale provider with respect to commercial use of the “E Block” spectrum. It also would be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. In addition, Frontline’s proposal would require the “E Block” licensee to offer roaming to any provider with customers utilizing devices compatible with the “E Block” network, with such obligation extended to all spectrum holdings of the “E Block” licensee. Frontline’s proposal also would require the “E Block” licensee to operate only as a wholesale provider with respect to commercial use of the “E Block” license, *i.e.*, it must have wholesale agreements for 100 percent of its spectrum capacity.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements *or* timetables that take into account the resources available to **small** entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such **small** entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, *or* any part thereof, for such small entities.”⁴⁴

27. **Performance Requirements.** Commenters who are small carriers could be found among commenters who supported both a substantial service requirement and a “keep what you use” framework. Some small CMRS providers recommended a combination of both population- and geography-based construction benchmark in the context of a “keep-what-you-use” approach.⁴⁵ The *Further Notice*

⁴⁴ 5 U.S.C. §§ 603(c)(1)-(4).

⁴⁵ See, e.g., DirecTV/EchoStar Comments in WT Docket 06-150 at 9; Navajo Nation Comments in WT Docket 06-150 at 2-3; RCA Comments in WT Docket 06-150 at 8-10; Vermont Department of Public Service, *et al.* Comments (continued....)

proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

28. By establishing clear benchmarks, the Commission would provide small licensees with regulatory certainty regarding the requirements that they must meet or, if they do not, permit other providers to gain access to the spectrum to provide services to consumers. The adoption of more stringent benchmarks also would complement the Commission's determination to auction additional licenses based on smaller geographic areas to promote access to spectrum and the provision of service, especially in rural areas.

29. The Commission recognizes that the existing substantial service standard could allow providers, including small carriers, additional flexibility with regard to their development and deployment of certain services.⁴⁶ The Commission determines, however, that given the excellent propagation characteristics of this spectrum, the benefits of service being offered before the end of the license term, and the public interest that would be served by ensuring additional service in the more rural and remote areas of this country, more rigorous requirements may be appropriate for these 700 MHz Commercial Services licenses.⁴⁷

30. Incumbent Eligibility. The proposals to prevent incumbents from being eligible to participate in the 700 MHz auctions can benefit small entities to the extent that they find less competition at auction from large entities such as established incumbent licensees, including wireline providers. Additionally, the proposal to provide bidding credits with regard to the Upper 700 MHz C Block for parties unaffiliated with incumbent wireline broadband service providers could encourage new entry by small entities.

31. Anonymous Bidding. Smaller auction participants can benefit from having access to information about larger entities' bids during the auction, and smaller auction participants may encounter difficulties with financing if the Commission withholds the information during the auction. However, the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Accordingly, in seeking comment on whether to require anonymous bidding for 700 MHz auctions, the Commission balances the difficulties it may cause to smaller auction participants, against the opportunities for new entrants—including small entities—that may result from anonymous bidding.

32. 700 MHz Band Plan Proposals. The *Further Notice* includes several proposals to reconfigure the 700 MHz Band plan. Under any revised band plan, the Commission seeks comment on whether the spectrum block adjacent to the Public Safety Band's lower half would, pursuant to another tentative conclusion, be responsible for funding the reconfiguration of the public safety spectrum with the narrowband channels at the upper end and a broadband allocation at the lower end. This proposal would, if adopted, impose additional economic burdens on any small business that procured the spectrum block adjacent to the Public Safety Band's proposed broadband allocation.

33. The *Further Notice* also proposes to license the 700 MHz Band using a mix of small, medium and large geographic areas. These proposed service area definitions should benefit small businesses, because they would enhance the mix of licenses to be made available in the 700 MHz Band, (Continued from previous page) —————

in WT Docket 06-150 at 5-8. The Navajo Nation, RCA, and the Vermont Department of Public Service, *et al.* favorably discuss both benchmarks and a "keep-what-yon-use" approach

⁴⁶ See AT&T Comments in WT Docket 06-150 at 12-13; CTIA Comments in WT Docket 06-150 at 10; Dobson Comments in WT Docket 06-150 at 5; Leap Comments in WT Docket 06-150 at 10.

⁴⁷ See, e.g., Aloha Comments in WT Docket 06-150 at 2; Blooston Comments in WT Docket 06-150 at 3; Dobson Comments in WT Docket 06-150 at 3; Frontier Comments in WT Docket 06-150 at 4; NTCA Comments in WT Docket 06-150 at 3-5; RCA Comments in WT Docket 06-150 at 3-4; RTG Comments in WT Docket 06-150 at 4-5.

and are consistent with the goals of providing greater access to spectrum for small providers and parties in rural areas, and improving the opportunity for a wider range of potential licensees to access this spectrum.

34. Public Safety Broadband. The *Further Notice* tentatively concludes to reallocate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and prohibit wideband operations on a going forward basis. The public safety community expressed broad support for a broadband allocation to enable advanced communications capabilities. The availability of a contiguous block of broadband spectrum, subject to a nationwide interoperability standard, would enable partnerships with commercial licensees in adjacent broadband spectrum. As a result, the proposed band plan would ultimately enable public safety entities to utilize the 700 MHz spectrum in a more cost-effective and spectrally efficient manner to address their homeland security and emergency response roles. Because the Commission does not anticipate that the proposal will impose additional economic burdens on public safety, and is in fact designed to reduce economic burdens on public safety, the Commission has taken steps to minimize any adverse impact of the rule changes.

35. The *Further Notice* also seeks comment on its tentative conclusion to consolidate the narrowband spectrum to the top of the public safety band and locate the broadband spectrum at the bottom of the public safety band, in light of the potentially significant benefits such reconfiguration would afford the public safety community. The alternative would be to retain the existing band plan. The *Further Notice* seeks comment on how to implement reconfiguration of the narrowband channels with minimum disruption to incumbent operations. The *Further Notice* invites comment on an appropriate transition mechanism, including how to accommodate public safety operations in the border areas with Canada and Mexico, and the costs of relocation and how such costs will be covered. The Commission expects that the number of entities impacted and expected cost of reconfiguration should be relatively minor. To assist the Commission in its analysis, however, commenters are requested to provide information regarding the number of narrowband radios that are deployed, as well as the number of radios that are in active use, and thus would be affected by the proposed changes to the 700 MHz public safety band plan as described in the *Further Notice*. The *Further Notice* recognizes that the public safety community's ability to fund the reconfiguration may be limited. Thus, in addition to considering whether public safety should pay for its own relocation costs, the *Further Notice* seeks comment on several alternatives, including whether to impose funding requirements on 700 MHz commercial licensees, and whether Federal or other grant monies could be used. In the event the Commission determines to license the broadband allocation to a nationwide public safety broadband licensee, the *Further Notice* also invites comment on whether that licensee should be assigned responsibility for funding the reconfiguration.

36. Although the economic burden on public safety to effectuate reconfiguration is expected to be relatively small, the *Further Notice* will develop a record on the true costs that would be implicated. The Commission remains open to considering alternatives, however, should an alternative be stated in comments that would reach our objectives and minimize the impact on public safety entities.

37. Frontline Proposal. In the *Further Notice*, the Commission seeks comment on Frontline's proposed "Public Safety Broadband Deployment Plan." Although Frontline proposes that the Commission offer bidding credits to applicants based on their status as a small business, the Commission tentatively concludes in the *Further Notice* that it should not offer any bidding preferences, such as bidding credits, to applicants for the "E Block" license. The *Further Notice* states, however, that the public interest would not appear to favor giving applicants a preference when bidding for the "E Block" license based on their limited financial resources, as the Commission does when it offers bidding credits to small businesses in these circumstances. The Commission stated that its concerns regarding the capital needed to implement a nationwide service are especially acute in this instance, because the "E Block" licensee would be responsible for constructing a network to meet the needs of critical public safety providers. The Commission seeks comment on this tentative conclusion.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

38. None.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WTDocket No. 06-150); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WTDocket No. 01-309); Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WTDocket No. 03-264); Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules (WTDocket No. 06-169); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06-229); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WTDocket No. 96-86); Report and Order and Further Notice of Proposed Rule Making.*

Since I became chairman, promoting broadband deployment and increasing penetration has been one of my highest priorities. I am pleased that since then, we have made significant progress. For instance, an independent study by Pew Internet and American Life Project recently confirmed our own findings about the growth of broadband. Pew found that from March 2005 to March 2006, overall broadband adoption increased by 40%—twice the growth rate of the year before. Critically, this significant increase in broadband adoption was widespread and cut across all demographics. Equally important, Pew found that the average price consumers pay for broadband has also dropped in the past two years.

However, there is no question that much work still needs to be done.

One important factor spurring both increased broadband availability and reduced prices is competition among broadband platforms.

In much of the country, however, consumers have a choice of only two broadband services: cable or DSL. And in some parts of the country, consumers don't even have that choice. The most important step we can take to provide affordable broadband to all Americans is to facilitate the deployment of a third "pipe" into the home. We need a real third broadband competitor. And we need a technology that is cost-effective to deploy not just in the big cities, but in the rural areas, as well. All Americans should enjoy the benefits of broadband competition – availability, high speeds, and low prices.

The upcoming auction presents the single most important opportunity for us to achieve this goal. Depending on how we structure the upcoming auction, we will either enable the emergence of a third broadband pipe – one that would be available to rural as well as urban American – or we will miss our biggest opportunity. Such a status quo outcome certainly would not sit well with consumer groups that have been strongly urging us to adopt rules that facilitate the ability of a "third pipe" to develop.

The leading technology companies – Google, Intel, Skype, Yahoo, along with DirecTV, and EchoStar are the only parties that have **promised** to try to provide a national, wireless broadband alternative. They have explained that, for a national wireless broadband service to emerge, the auction must do three things: (1) make available at least one 11 MHz paired block; (2) offer at least some large geographic areas; and (3) enable package bidding so that rights to a national service could be acquired. These technology companies have formed a coalition urging the Commission to follow these key principles that they believe are essential to the deployment of an additional broadband competitor.

I put forth a proposal that would meet these three requirements. I am surprised that some of my colleagues do not support this approach. Indeed, some of them have been the most critical of the current state of broadband deployment and competition and the most vocal about us needing a national strategy. It is puzzling that they would not endorse taking the minimum steps necessary to enable a wireless broadband alternative to develop for all Americans.

Importantly, the proposal I put forth would provide for a variety of geographic license areas spectrum block sizes. The mix of geographic license sizes coupled with a proposal for specific geographic build-out requirements – the strictest build-out the Commission has ever proposed – would help ensure that the rural and underserved areas of the country will benefit from the provision new services that this spectrum will facilitate. We also would permit higher power limits in rural areas, which will reduce the number of towers necessary to serve consumers and lower the cost of build-out. This proposal would provide significant opportunities for small and rural carriers as well as new entrants to the broadband market to obtain spectrum at auction.

Like broadband, meeting the needs of public safety has been a major focus of mine since becoming Chairman. We all **know** the tragedies that can occur when public safety officials cannot adequately communicate. The public safety community needs more spectrum, and they need to be able to build a truly national, interoperable broadband network. This item takes an important step to achieving those goals.

We tentatively conclude that public safety wideband spectrum allocation should be consolidated and revised to provide broadband only on a going-forward basis. In addition, many national and local public safety organizations have expressed support for a public-private partnership approach for a single, national licensee to achieve an interoperable public safety broadband network in the context of other public safety proposals. In the ***Further Notice***, we seek comment on the proposal by Frontline Wireless, which would establish a new commercial licensee that would have specific obligations to build out a common broadband infrastructure for public safety and commercial use, working in concert with a national public safety licensee. We also ask if there are other opportunities for public-private partnerships that will help bring our first responders the benefits of broadband.

Although we are seeking further comment on issues, I remain highly aware of the need to move swiftly to provide sufficient time for all parties to prepare for the auction. It is paramount that this auction not be delayed. I look forward to a focused public dialogue on these issues in the coming weeks, and look forward working with my fellow commissioners to come quickly to resolution on these issues.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Report and Order and FNPRM

The upcoming 700 MHz auction is perhaps the most important this Commission will ever conduct. When it comes to spectrum, to paraphrase Mark Twain, "they aren't making any more." And the soon-to-be freed-up 700 MHz variety is among the most valuable spectrum of all because of its uniquely favorable propagation characteristics.

So the stakes here are high—very high. If we do our jobs correctly, this auction will deliver countless benefits to the American people as well as billions of dollars to the U.S. Treasury. It will enhance our readiness for the next disaster and inject some much-needed competition into the market for broadband services across the nation (especially in rural areas). But if the Commission fails at its task, then we will have wasted one of the best opportunities in recent memory to improve the way our nation communicates, develops and protects itself. We will never have another chance like this one.

Let's begin with the question of public safety which is, as you have often heard me say, the first obligation of the public servant. In a more perfect world, our nation's first responders would already have access to a cutting-edge, custom-built, interoperable and fully-funded broadband network that makes use of dedicated public safety spectrum. After all, it has been over half a decade since 9/11 and we are coming up on the two-year anniversary of Hurricane Katrina. Both tragedies were greatly—and unnecessarily—compounded by flaws in our public safety communications system. And yet we are not appreciably closer to a solution today than we were back then. This is a failure—a truly monumental national failure—that I believe will come to haunt us in the years ahead.

It is against this background of missed opportunities and an unacceptable status quo that we must consider a recent, late-filed proposal to create a nationwide, interoperable, public-private broadband network in the 700 MHz band. The basic idea is a network that will be used by both commercial and public safety users, with commercial users generating enough revenue to build and operate the network and with public safety users able to preempt commercial users (either in whole or in part) during an emergency. It's a tantalizing prospect—but *only* if it works as promised. And there's the challenge.

So let me be crystal clear right up-front: I am not at all sure that a dual-use network along the lines proposed here will actually deliver public safety users the network they *so* desperately need and deserve. While I certainly support putting this proposal out for comment, even at this late date, I am going to approach it with a skeptical eye. Put simply, I will need strong assurances—much stronger than any we have been provided thus far—that the plan will *actually work* before I can support it. And by work, I mean *work for public safety*. I'm talking about an interoperable network—built *and configured to public safety standards*—that police officers, firefighters, EMS technicians and other first responders all across the nation can actually afford to use. And I mean a system that is managed and maintained with a clear public safety priority, with the hard preemption and other calls made by those entrusted with ensuring the public safety. Let's focus on these issues in some detail.

To begin with, a public safety network is a fundamentally different beast than a commercial network. It requires greater reliability and interoperability, as well as a substantially different architecture, than traditional cellular networks. We've all felt the frustration and annoyance that comes when our cell phone drops a call. But for a first responder or a person in distress, a dropped communication can quite literally be the difference between life and death. Ninety-five or ninety-six

percent reliability just isn't going to cut it here, nor are weather- or disaster-related outages. We should be demanding the wireline system's famous "five nines"—99.999%—or better. To take a second example, we also all know how complicated it can be to organize a conference call with a handful of colleagues. But first responders need instantaneous communication with extensive talk groups at the scene of a major disaster—groups that can contain several hundred officers from dozens of different jurisdictions and services. I am unaware of any commercial network that is designed to provide such a feature. And public safety users need to be able to communicate directly from handset to handset, even if a central cell tower has been knocked down. Again, this is not a feature that commercial operators typically provide.

A public safety network also needs to be ubiquitous, or as close to ubiquitous as is practically feasible. First responders don't lose the need to communicate just because they are on a distant farm, an underground urban parking garage, or some other remote location; if anything, the need is even greater. Commercial build-out schedules are simply not appropriate here. So in any plan that is adopted I will be looking for strong assurances for an accelerated build-out schedule.

Here is another imperative that we might as well face up to right here. No plan is going to work without the close, ongoing oversight and enforcement authority of this Commission. The commitments made here are commitments that have to be met. This isn't about voluntary best efforts that may or may not culminate in real-world results at some future date—this is about getting an essential job done right and done on time. Achieving just the right balance in the management and oversight of this dual-use system and making sure it is flexible enough to jump from one purpose to another instantaneously will require unprecedented and historical coordination and cooperation. Just hoping that effective decision-making will fall into place between commercial and public safety partners who have different strengths, different histories and different levels of influence does not provide the kind of guarantees needed here.

And then, of course, there is the issue of money. The proposal we are considering here would give public safety users a binding legal right to access spectrum on a preemptible basis—but for a price. This brings to mind Anatole France's bitter observation about how the law in its majesty forbids both rich and poor from sleeping under bridges. The fundamental question here is whether public safety users will be able to *afford* to exercise their right to access the network. The network we're talking about cannot be just a luxury item available to a few first responders whose budgets allow them to use costly services—it needs to be something that public safety users, all across the nation, can afford to use on a regular basis and to rely upon as one of their basic forms of communication. Cash registers and toll booths don't belong at the heart of our nation's public safety planning. I approach these questions with special skepticism because I've seen too many companies, many with genuinely good intentions, promise to abide by a slew of special public interest conditions when they are seeking a license. But then, a few years down the road—and after a change in management or sometimes just a change in attitude—they suddenly develop an overpowering interest in reducing costs and increasing profits beyond the level that their original commitments would allow. When this seemingly inevitable shift occurs, the commercial operator will face strong pressure to cut back on the costly features that public safety demands and to start charging higher prices that commercial users but not public safety users can swallow. For this reason, I think that the FCC must—at a minimum—maintain strong and ongoing oversight of any for-profit corporation that is charged with maintaining a public safety network.

I also have concerns about whether preempting commercial users in favor of public safety users during times of emergency could have unintended and possibly dangerous consequences. For example, consider the tragic possibility of someone trapped under a building who cannot call for help because his or her cell phone relies on spectrum that has been preempted for exclusive use by first responders. Or consider how preemption might impact the ability of commercial end users to contact colleagues and loved ones in the aftermath of a crisis. I recognize, of course, that communications bandwidth will inevitably become a scarce and precious resource during an emergency and that first responders have a

unique claim to priority in such situations. But at the same time, we need to think about whether it may be feasible to give some degree of priority to certain commercial communications—such as calls to 911—as well as about the wisdom of adopting a plan that could give commercial end-users a false sense of security about technologies that will become unavailable at exactly the times they are most needed.

I am pleased that today's FNPRM seeks comment on some of the issues I have just discussed, as well as others such as the potential inclusion of satellite technologies in any viable public safety proposal; how best to manage cross-border interference issues; and whether the Commission should adopt anonymous bidding procedures. I also am pleased that we ask general questions about how the "open-access" proposals made by some might encourage the development of a sorely-needed wireless "third pipe" in the broadband market. And though today's item does not seek specific comment on every conceivable aspect of the proposal, I would welcome and encourage interested parties to offer their thoughts on whatever other considerations they deem relevant, including the possible unintended consequences of allowing public safety users to preempt commercial users; on what lessons the Commission should draw from the experiences of other countries (like the United Kingdom) that have considered or adopted public-private spectrum sharing initiatives; and on what level of detail and specificity the Network Sharing Agreement should go into about network design and cost/revenue sharing between the commercial licensee and public safety users.

It took a while and it took some doing, but I think this notice now proceeds in a good and measured way regarding band plans. We make no conclusions here, final or tentative, but instead tee up a number of options. I wish we had a Commission-wide consensus plan right now, but we don't. The options presented in the item provide, however, reasonable parameters for final Commission decision-making. I have put forward ideas to achieve a fair and balanced approach. As I have noted several times, I think that the Commission should offer a wide variety of geographic license sizes—just as we did in last year's AWS auction. This is the appropriate way to balance the competitive goals of the auction. Small and medium license sizes play a critical role in encouraging participation among smaller and rural wireless companies. At the same time, larger license sizes can permit new entrants—such as high tech entrepreneurs and satellite providers—to offer broadband on a nationwide basis. One size doesn't fit all, and I am convinced that we can put together a final plan making room for a multiplicity of interests.

Certain it is that we desperately need a third broadband pipe to challenge the current telco-cable duopoly in **our** metropolitan areas, as well a **first** broadband pipe in many rural areas. It is this duopoly and lack of rural availability that have caused the United States to continue its slide in the world when it comes to broadband—witness the OECD ranking that came out just the other day taking the United States from 12th to 15th among the nations. And as I have noted before, I don't think any of **us** should be relying on wireless companies owned by wireline broadband providers to provide this much-needed competition. **So** coming **up** with a good, progressive auction strategy is a good step forward—maybe one that can actually produce a new entrant into the broadband market—but don't mistake what we are talking about today for anything like the sort of comprehensive broadband strategy that our country **so** desperately needs. I guess that will await another day.

Finally, I am pleased with our proposal that the 700 MHz licenses be subject to strong performance requirements for network build-out. A license to use the people's airwaves is a public trust—and we must not countenance spectrum warehousing or any other unreasonable delay in putting this spectrum to work. However, even as we seek to provide licensees with a firm incentive to make use of spectrum, we also need to make sure that we do not unfairly punish licensees—especially in rural areas—who cannot engage in aggressive build-out for perfectly good economic reasons. I look forward to reading comments from the parties on this important issue.

I want to thank all my colleagues for their hard work on this item; various stakeholders who have already contributed input into our deliberations; and the Bureau for working late into the night on several

occasions to start us down the road on one of the greatest challenges we've ever confronted. I also thank the Bureau in advance for what I know will be its hard work to develop final service **rules** for this granddaddy of **all** auctions, hopefully by June ~~of~~ this year.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

**Re: *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; WT Docket No. 06-150 et al;
Report and Order and Further Notice of Proposed Rulemaking***

Today, we take another step towards one of the most significant FCC actions in this decade. Our 700 MHz auction will be a critical opportunity for new and existing providers to bring the latest technologies and services to the American people. There rightly is a great deal of pressure on the Commission to construct a hand plan and service rules that will meet a wide-range of interests. We hear from an ever-increasing chorus of voices expressing concern about the lack of competition in the broadband marketplace and the need to promote advanced services in rural and other underserved areas. So our decisions today and in the near future will have a profound impact on the future role of wireless broadband services and on the ability of wireless providers to provide important competition to existing providers of these critical services.

The item before us is much improved, and because of these changes I can enthusiastically support it. I appreciate the willingness of my colleagues to accept several of my edits to create a more balanced discussion of a proposed band plan and to ask more meaningful questions about ways in which the band plan should or not be changed. I also support the meaningful performance requirements proposed in the item and am pleased with Chairman Martin's suggestion to propose to apply these requirements on a geographic basis. Finally, I support our inquiry into whether or not we should condition a "Block E license on the licensee constructing a public safety broadband network and providing wholesale commercial services. I am pleased that we were able to add a number of important questions about the oversight of such a potential licensee.

The item is also greatly improved with the addition of a number of the questions raised by the *Ad Hoc* Public Interest Spectrum Coalition about alternative open access proposals in the 700 MHz band and on possible steps the Commission could take to encourage the entry of new wireless competitors. We need to maximize the possibility that new competition emerges from this spectrum opportunity. Some talk about a "third pipe" into the home to challenge the cozy duopoly between the cable and telephone companies that now dominate the broadband marketplace. I like to think we need to encourage the creation of a "third channel" into the home, since wireless technologies are most likely to provide the competitive alternative. The questions we ask today about open access networks are critical to informing this debate.

Band Plan

The Commission has a unique role in establishing the market for spectrum. Auctions are a free-market mechanism, but it is the government's role to establish the ground rules through a band plan. We have a special responsibility to establish band plans that allow for a diversity of license sizes. We want to maximize the level of utilization by giving more options so that the market can perform most efficiently. We also want to preclude companies from being forced to bid on licenses that are larger than the areas they intend to serve. Large carriers can always aggregate smaller licenses, but companies of all sizes cannot make license areas any smaller during the auction process than what the Commission allows.

As we begin to finalize our rules for the 700 MHz auction, it is critical we build on the lessons learned from our previous auctions to provide a diverse group of licenses so that all bidders have an opportunity to obtain licenses that best match their business plan. While I have supported rules to facilitate the secondary market for spectrum rights and licenses, I think we are best served by providing a wide variety of license sizes at the initial auction when appropriate.

Turning to the specific item before us, I would have been concerned if the Commission had proposed a band plan that ignored the overwhelming record that advocated for a more balanced set of license areas – a band plan that would accommodate large and small interests, tribal governments, rural providers, and possible new entrants. We simply would not have been well served by a band plan that positions all but one of the remaining blocks to be auctioned on a large, regional basis. **So I** am very pleased with our proposal to auction off the paired A block in the lower 700 MHz band on EA basis.

While **I** am troubled by the item's treatment of the Broadband Optimization Plan, **I** am pleased that we have added a request for comment on the latest proposal by Access Spectrum and Pegasus to reconfigure the guard band and public safety 700 MHz spectrum allocations. Access Spectrum and Pegasus are to be commended for their ongoing efforts in pushing proposals that will facilitate more efficient use of the upper 700 MHz band while at the same time addressing critical communications needs of public safety. Their recent proposal deserves serious consideration as it (1) clearly addresses the Canadian border issue for public safety; (2) eliminates the need for undefined temporary easements in the commercial band adjacent to public safety; and (3) ensures funding from Access Spectrum and Pegasus for the conversion of existing 700 MHz narrowband public safety systems and the necessary changes to the Computer Assisted Re-Coordination Resource and Database System. These are important public interest objectives, and are particularly critical to the consolidation of public safety's narrowband spectrum.

Finally, **I** am pleased that we are seeking comment on a variety of proposals to modify the structure of the upper 700 MHz band. We have heard from a number of diverse parties on this matter, and **I** believe it is important that we continue to keep critical band plan issues on the table given that we are putting other proposals out for comment. This discussion will well inform and advance our consideration of these challenging issues.

Some have argued that a more flexible upper 700 MHz band plan that includes a mix of licenses could better support a variety of business plans and ensures that the spectrum is made available to the bidders that value it most. There is a concern that a band plan with only REAGs in the upper 700 MHz band may artificially favor only the largest wireless incumbents or particular business models. On the other hand, a paired 22 MHz block available on a REAG basis could address the needs of potential new entrants, some of whom argue that they need the ability to create a large swath of spectrum to compete with a wireless broadband product on a national basis. And other groups have noted that this 700 MHz spectrum is a unique opportunity to create a new competitor to our highly-concentrated broadband market, and have argued that a band plan that allows for larger blocks will facilitate entry by new providers.

So I am pleased that we have band plans in the item representing all of these different views. **I** did not believe it was necessary to potentially foreclose the band plan debate today by tipping our hand in one direction or the other, at the same time we are seeking further comment on so many issues related to the 700 MHz auction.

Performance requirements

I have long talked about my interests in promoting spectrum use. Our job at the FCC is to do whatever we can to promote spectrum-based opportunities like the significant prospects for advanced wireless communications services in the 700 MHz band. To get there, **I** am continually evaluating the FCC's service and construction rules to ensure that our policies do not undercut the ability of wireless innovators to get access to new or unused spectrum. **I** have advocated a carrot and stick approach. We want to promote flexibility and innovation, but since the spectrum is a finite public resource, we want to see results as well.

In this regard, I am pleased to support the Chairman's proposal to base performance requirements in the 700 MHz band on a geographic basis. This is a meaningful requirement that shows the Commission's resolve in ensuring that this valuable public resource is put to use for the benefit of all Americans, no matter where they live. By proposing a geographic coverage requirement, we are looking to ensure that 700 MHz will not become an untapped well for the thirsty and instead will be deployed to all corners of the country. Given the favorable propagation characteristics of this spectrum, a rigorous performance requirement well serves the public interest.

E Block Public-Private Public Safety Network

This country has a dilemma. Policymakers all agree that our first responders need the best technology and communications networks possible. Yet, we continue to have a situation in which many of our nation's public safety agencies struggle to keep pace with today's rapidly evolving communications landscape. And interoperability remains an elusive goal for too many first responders. Our nation needs a national interoperable public safety broadband network.

So I very much appreciate the leadership of Frontline in developing a creative proposal that may allow this country to move forward with a national public safety communications network. And I would be remiss in not recognizing the early work of Cyren Call in planting the seeds of a commercially-supported public safety broadband network.

The Frontline proposal offers many intriguing positions. First and foremost, the Commission would require the E Block licensee to construct and operate a nationwide, interoperable broadband network for sharing with a national public safety licensee. This public-private network would use commercial spectrum in the upper 700 MHz band as well as 12 megahertz of the public safety spectrum block. Second, the E Block licensee would be required to operate as a facilities-based wholesale provider with respect to commercial use of the spectrum. And finally, the E Block licensee would be required to provide open access to its network, allow the attachment of any device to its network, and permit users to access the content and services of their choice. Frontline's proposal rightly addresses many of the concerns that have been recently raised with our existing wireless communications marketplace.

So I applaud Frontline for their initiative; but a number of questions still remain if we decide to go forward with such a unique proposal. Primarily, how does the Commission ensure that the E Block licensee truly meets the needs of public safety in deploying and operating the national broadband network? What can the Commission legally impose on the E Block licensee to make sure that it meets not just its own commercial objectives, but the Government's objectives as well? If we go forward with a facilities-based wholesale network, what rules can we adopt to ensure that the E Block licensee does not simply turn around and wholesale services back to itself or its commonly controlled affiliates? I am pleased that we were able to add a number of additional questions to the item about the oversight of the E Block licensee should the Frontline proposal be adopted in one form and another.

Conclusion

Finally, as we consider a schedule for the upcoming 700 MHz auction, we must remember that our rules have not yet been finalized. We must be mindful that some companies may not currently be in a position to move forward with plans to participate in the auction until the Commission makes a final decision about the band plan and specific performance requirements. They need sufficient time to establish business plans and line up financing. Consequently, we must make sure that our auction schedule allows for sufficient spacing between the adoption of final 700 MHz band rules and the filing of auction applications. This will ensure that the auction truly is available to a diverse group of interested parties, and that full participation will lead to a more successful and robust auction. I am confident that we can provide the necessary time for preparation and still comply with our statutory obligations related

to the auction.

I would like to thank the Wireless Telecommunications Bureau staff **for** their continued hard **work** in guiding us to the 700 MHz auction. With the digital transition on the horizon, our work comes at a crucial time, and we are making decisions that will impact the 700 MHz band and indeed the future of wireless services to come. Additional dialogue on these matters can only serve American consumers well. I **look** forward to working with my colleagues and the Bureau in tackling these important issues in the very near future.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WTDocket No. 06-150); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102); Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WTDocket No. 01-309); Biennial Regulatory Review - Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WTDocket No. 03-264); Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules (WTDocket No. 06-169); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06-229); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WTDocket No. 96-86).

Broadband deployment is vital to our nation. ~~The~~ availability of ubiquitous, reliable, high-speed broadband access already is changing the way Americans work and live, but we must act to ensure that the unprecedented business, educational, and healthcare opportunities that broadband makes possible are available to all Americans, regardless of where they chose to live. I'm not alone in this opinion. Every member of this Commission has voiced the need for ubiquitous, affordable broadband, and Members of Congress have clearly indicated their belief that the FCC must do more to get broadband services deployed to all Americans.

The adoption of today's item is a critical step towards achieving this shared goal. The inherent propagation characteristics of the 700 MHz band could make it less expensive to construct new networks covering larger geographic areas, making it ideal for expanding the availability of broadband in rural areas. At the same time, the band potentially provides better in-building coverage than higher frequencies, which not only would facilitate the provision of advanced services in urban areas but also could help improve 911 access and location system performance. The rules we adopt today, along with the detailed questions set forth in the Further Notice, bring ~~us~~ one step ~~closer~~ to putting this critical spectrum into the hands ~~of~~ those who can best put it to work.

In conducting the upcoming 700 MHz auction, we must be particularly mindful of the following Congressional directives: (1) encouraging small businesses, rural telephone companies, and businesses owned by members of minority groups and women to participate in the auction; and (2) commencing the auction no later than January 28, 2008, with the proceeds of the auction to be deposited into the Digital Television Transition and Public Safety Fund no later than June 30, 2008. These directives are not mutually exclusive.

In the highly successful AWS auction, the Commission increased the amount of spectrum licensed in smaller geographic areas – 20 megahertz to be exact – to afford greater opportunities for smaller, rural or regional providers to obtain access to that spectrum at auction. Forty eight rural telephone companies were winning bidders in the AWS auction – a clear indicator of success. I am very interested in hearing comments on how the proposed band plan would help to ensure a repeat of that success.

The sooner the auction begins, the closer we will be to reaping the benefits of services provided via this prime spectrum. I look forward to working with my colleagues to move this forward expeditiously.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

RE: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-180, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27 and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. **03-264**, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to ~~Part~~ 27 of the Commission's Rules, WT Docket No. 06-169, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72

Opening up the Lower and Upper 700 MHz Band for auction is America's best opportunity for spurring more competition in the broadband market. More than likely, we will not have another chance like this for years. That's why it is so important that we get it right. But we also need to act quickly. That's not just a good idea, it's the law. Congress has mandated that we start the auction no later than January 28, 2008, and deposit the auction proceeds by June 30, 2008. So, we appear to have some tension between getting it done right and meeting our statutory deadlines. That said, I am optimistic that we can produce high-quality service and auction rules on time. However, I am not without some anxiety.

It is important to note that the Commission is not reaching any tentative conclusions with respect to the band plan today. We are inviting additional comment and debate on several ideas. And, I thank the Chairman for his patience and flexibility in this regard. I'd also like to make clear that I have not reached conclusions on certain of the proposals discussed in today's *Further Notice*. That's why I'm delighted we'll be building a more complete record upon which to make an informed decision.

In my view, to "get it right," the Commission must ensure that businesses of all sizes have a fair opportunity to bid on varied market sizes in both the Upper *and* Lower bands of the 700 MHz slice. The Lower and Upper portions offer their own attributes that are attractive to different entities for different reasons. Accordingly, both the Upper and Lower portions should be accessible at auction to all bona fide bidders regardless of size. Ideally, our rules should also provide bidders the flexibility to aggregate markets together to create either a nationwide market, or large, regional or other customized markets much like that occurred in the AWS auction, but even better. Providing such equal opportunities will help increase the chances of competition in the broadband market for the benefit of *all* Americans. The more players we have competing both between and within platforms, the better. Such competition will also spur untold economic growth.

Some may be concerned that allowing for smaller market sizes in the Upper portion of the band may preclude the ability of some entities to secure a nationwide license to provide a new, competitive broadband platform, or a "third pipe." I'd like to hear more about those concerns. In the AWS auction, we witnessed a successful effort that fashioned together EA markets to form a virtual nationwide license. I welcome a discussion regarding that may or may not work in the 700 MHz band. However, we must be careful to ensure that we do not overly-tailor our auction rules to fit a particular business plan because there are never any guarantees as to who will participate at auction, or for how long.

Should we be limited to three pipes? Why not four, five or more? Are only national companies capable of providing such alternative platforms? What about regional players or local providers? Small town entrepreneurs? I hope commenters will help provide answers to these important questions.

In a perfect world, we would be completing our work in the 700 MHz commercial services proceeding today, and interested parties and potential auction participants would have both the certainty and time necessary to give consideration to the significant matters surrounding participation in a spectrum auction. But we live in an imperfect world where issues to be resolved by rulemakings are complex. In this spirit, I support the Commission's effort to seek additional comment on the unresolved matters relating to our upcoming auction of spectrum in the 700 MHz band.

Once we reach the end of this process, I hope that I find that my concerns were misplaced. It goes without saying that I will do all I can to ensure that the Commission completes this proceeding in record time.

Finally, in addition to my thanks to the Chairman and my colleagues, I want to acknowledge the hard working and talented staff of the Wireless Telecommunications Bureau. We have a number of milestones ahead of us, and I thank you for your diligence despite the demanding schedule associated with this proceeding.